

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: ) Chapter 11  
WINSTAR, ) **COPY**  
Debtor. ) Case No. 01-1430

Tuesday, December 18, 2001  
4:00 p.m.  
Courtroom 6A

844 King Street  
Wilmington, Delaware

BEFORE: THE HONORABLE JOSEPH J. FARNAN, JR.  
United States District Court Judge

APPEARANCES:

YOUNG, CONAWAY, STARGATT & TAYLOR, LLP  
BY: PAULINE K. MORGAN, ESQ.  
BY: M. BLAKE CLEARY, ESQ.

and

SHERMAN & STERLY  
BY: MARK SHAPIRO, ESQ.

Counsel for the Debtors

WEIL, GOTSHAL & MANGES, LLP  
BY: STEPHEN KAROTKIN, ESQ.

and

KLETT ROONEY  
BY: RICHARD S. COBB, ESQ.

Counsel for DIP Lenders



1 APPEARANCES CONTINUED:

2

THE BAYARD FIRM  
3 BY: NEIL GLASSMAN, ESQ.

4

Counsel for the Creditors Committee

5

McDERMOTT, WILL & EMERY  
6 BY: DAVID C. ALBALAH, ESQ.  
BY: MARK M. SELINGER, ESQ.  
7 BY: SHIRLEY S. FUJIMOTO, ESQ.  
BY: CHARLES H.F. GARNER, ESQ.

8

Counsel for IDT Winstar  
9 Acquisition, Inc.

10

LEPON, MCCARTHY, WHITE & HOLYWORTH  
11 BY: WILLIAM WHITE, ESQ.

12

Counsel for Bell South

13

ELZUFON, AUSTIN, REARDON & MONDELL, P.A.  
14 BY: WILLIAM D. SULLIVAN, ESQ.

15

and

16

JESSOP & COMPANY, P.C.  
17 BY: DOUGLAS W. JESSOP, ESQ.

18

Counsel for Univance  
18 Telecommunications

19

MORRIS, JAMES, HITCHENS & WILLIAMS  
19 BY: CHUCK N. KUNZ, III, ESQ.

20

and

21

SILLS, CUMMMIS, RADON, TISCHMAN & GROSS  
22 BY: ANDREW SHERMAN, ESQ.

23

Counsel for Qwest Communication  
23 Corporation and Qwest Corporation

24

1 APPEARANCES CONTINUED:

2

SMITH, KATZENSTEIN & FURLOW  
BY: KATHLEEN MILLER, ESQ.

4

and

5

ARNULL, GOLDEN & GREGORY  
BY: DARRYL LADDIN, ESQ.

6

7

Counsel for Operating  
Subsidiaries of Verizon

8

9

POTTER, ANDERSON & CORROON, LLP  
BY: LAURIE SELBER SILVERSTEIN, ESQ.

10

Counsel for Certain  
Affiliates of SBC

11

12

ASHBY & GEDDES  
BY: RICARDO PALACIO, ESQ.

13

14

and

15

CONNOR & WINTERS  
BY: ANDREW R. TURNER, ESQ.

16

Counsel for Williams  
Communications

17

18

SAUL, EWING, REMICK & SAUL, LLP  
BY: MARK MINUTI, ESQ.

19

20

Counsel for Heitman/SV Atlanta

21

SAUL, EWING, REMICK & SAUL, LLP  
BY: MARIA APRILE SAWCZUK, ESQ.

22

23

Counsel for Espire Communications,  
Heitman & SV Atlanta

24

1 APPEARANCES CONTINUED:

2 RICHARDS, LAYTON & FINGER  
3 BY: REBECCA L. BOOTH, ESQ.

4 and

5 JONES DAY  
6 BY: MICHELLE MORGAN HARNER, ESQ.

7 Counsel for Lucent  
8 Technologies, Inc.

9 BIGGS & BATTAGLIA  
10 BY: ROBERT GOLDBERG, ESQ.

11 Counsel for Sprint  
12 Communication Co., LLP

13 UNITED STATES TRUSTEE'S OFFICE  
14 BY: MARK KENNEY, ESQ.

15 Counsel for the U.S. Trustee

16 PEPPER HAMILTON, LLP  
17 BY: AARON GARBER, ESQ.

18 Counsel for Cisco System  
19 Capital Corp.

20 ASHBY & GEDDES  
21 BY: REGINA A. IORII, ESQ.

22 Counsel for Fleet Capital Corp.

23 COZEN & O'CONNOR  
24 BY: SHELLEY KINSELLA, ESQ.

Counsel for Transamerica, et al

1 APPEARANCES CONTINUED:

2

3 REED SMITH, LLP  
4 BY: JENNIFER KELLEHER, ESQ.

5

Counsel for CIT

6

7 ROSENTHAL, MONHAIT, GROSS & GODDESS  
8 BY: EDWARD ROSENTHAL, ESQ.

9

Counsel for Advanced Fibre  
Communications

10

11 REED SMITH, LLP  
12 BY: KURT F. GWYNNE, ESQ.

13

Counsel for MCI WorldCom

14

15 BLANK, ROME, COMISKY & McCAULEY, LLP  
16 BY: DALE R. DUBE, ESQ.

17

Counsel for Velocita

18

19 LOWENSTEIN SANDLER  
20 BY: PAUL KIZEL, ESQ.

21

Counsel for AT&T Corp.

22

23 Also Present:

24 Mr. Howard Jonas  
Mr. Gary Morgan  
Ms. Carolyn Hunter

1 THE CLERK: All rise.

2 THE COURT: Good afternoon.

3 Mr. Shapiro.

4 MR. SHAPIRO: Good afternoon, Your  
5 Honor. Mark Shapiro from Sherman & Sterling for  
6 Winstar Communications, Inc.

7 Your Honor, we're here for the  
8 continuation from the hearing yesterday scheduled  
9 to approve an asset sale agreement. As Your Honor  
10 knows, when we appeared yesterday, we did not have  
11 a signed asset sale agreement with any bidder.

12 Just to recount history for one  
13 moment, Debtors held an auction at the office of  
14 Sherman & Sterling. The Debtors chose Wintel led  
15 by Mr. Lawrence Zimmerman as the highest and best  
16 offer.

17 With the purchase price proposed of  
18 \$85 million in cash and various assumption of  
19 certain liabilities.

20 Mr. Zimmerman, as part of that  
21 offer, agreed that he would deposit \$15 million in  
22 an escrow account with Sherman & Sterling.  
23 Unfortunately, that did not come to pass. And as  
24 of yesterday morning, Wintel -- Zimmerman had

1 never deposited any of the funds that were  
2 promised nor had the Debtor ever reached  
3 agreement, even in principal, with Mr. Zimmerman.

4               We adjourned the hearing and had a  
5 chambers conference with Your Honor to discuss the  
6 possibility to converting this case to Chapter 7  
7 and I guess fortuitously, when we were out in  
8 chambers, IDT Corporation met with Arthur Newman  
9 and the president from the Blackstone Group to  
10 make an offer for purchase of substantially all of  
11 the assets of Winstar Communications. That offer  
12 was communicated on the record yesterday before  
13 Your Honor, which contained salient points, but  
14 remain subject to a definitive agreement to be  
15 negotiated and signed by the Debtor and by  
16 purchaser IDT Corporation or special purpose  
17 vehicle to be established by IDT.

18               At this point, I believe we just  
19 finished initialing all the changes and the only  
20 thing that remains to be done is to have IDT's  
21 representative sign the agreement, which I'm being  
22 told is going to happen at this very moment. And  
23 since we only have one copy that's actually marked  
24 up, I would ask Your Honor if we could sign the



1 agreement right now so we know we have a signed  
2 agreement.

3 THE COURT: All right.

4 MR. GLASSMAN: I don't know who  
5 this is.

6 MR. SHAPIRO: This is Mr. Charles  
7 Garner, executive of IDT.

8 MR. GARNER: Am I president of  
9 the --

10 MR. SHAPIRO: Yes.

11 In addition, I believe we have  
12 complete agreement of the management agreement,  
13 which is proposed to be signed not today, but at  
14 the closing which is proposed for tomorrow, but we  
15 have an agreement of a form of management. I  
16 don't know if Mr. Selinger could hand that up.

17 We also have agreement of a form of  
18 order although I do know that the FCC, I believe  
19 and the Justice Department were negotiating a few  
20 modifications to the order. I don't know if those  
21 were completed, but I suspect if they're not, we  
22 could complete them in very short order.

23 What I'd like to do now, Your  
24 Honor, is as Your Honor knows, under the asset

1 purchase agreement, the purchaser has requested  
2 that the Debtors provide a topping fee, in the  
3 event that the higher and better offer was  
4 accepted and approved by this court.

5           The topping fee, which is contained  
6 in Section 6.10D of the asset purchase agreement  
7 provides that as a condition to buyers obligations  
8 here under -- sellers agreed to pay to buyer  
9 amount equal to two and a half percent of the cash  
10 payment. Cash payment for the record is \$30  
11 million.

12           If this agreement is terminated  
13 other than as a result of default by the buyer and  
14 the performance of the obligations hereunder,  
15 sellers shall enter into one or more sales  
16 transactions and such transaction or transactions  
17 should be consummated.

18           Being that, the placing of a fund  
19 into an escrow fund would not constitute receipt  
20 by the sellers until the founder actually released  
21 to the sellers.

22           To summarize, two and a half percent  
23 of \$30 million would be paid to them if a higher  
24 and better offer is received. Obviously, the

1 higher and better offer would have to be \$30  
2 million plus two and a half percent, which is  
3 roughly a million dollars. And it would only be  
4 paid if that own transaction is not only approved  
5 by Your Honor, but consummated, and if the sale  
6 proceeds ultimately reach the Debtors not -- or  
7 just placed into escrow, and that escrow  
8 ultimately needs to break properly to the  
9 Debtors.

10                   So what we would like to do, the  
11 buyer has asked me to request that Your Honor make  
12 a bench ruling before we start this auction so  
13 that they know that they have the protection if  
14 another bidder was ultimately selected, and the  
15 Debtor believes that this is in the best interest  
16 of the estate, that it meets the requirements  
17 under O'Brien, and this is a necessary expense of  
18 the estate.

19                   As Your Honor knows, yesterday we  
20 had no bidders. If we have any bidders today,  
21 it's only because IDT came in with a bid late  
22 yesterday and worked around the clock, including  
23 all night with us to consummate this transaction.  
24 And the Debtors believe at this point that it's

1 appropriate to provide IDT with protection to the  
2 topping fee.

3 THE COURT: All right. Mr. Kenney.

4 MR. KENNEY: Your Honor, I'm not  
5 going to oppose in this circumstances because I've  
6 seen what's going on in this transaction. I think  
7 that if somebody else does come out of the  
8 woodwork right now, we probably wouldn't be able  
9 to attribute to what's taken place up to now.

10 THE COURT: All right. Anyone wish  
11 to be heard?

12 (Silence.)

13 THE COURT: All right. I'll grant  
14 the application.

15 Wait. There's some folks coming  
16 forward.

17 MR. ROUHANA: Your Honor, I'm Bill  
18 Rouhana. I am an attorney, but I'm not attorney  
19 in this context. I was the chairman and chief  
20 executive of the company as well as the founder of  
21 it, and I am here today to make an alternative  
22 bid. And I thought you ought to know that before  
23 you would approve a breakup fee.

24 I can assure you that my interest in

1 the company was not created by IDT. So I just  
2 thought you ought to know that.

3 THE COURT: All right. Thank you.

4 MS. NEWELL: Good afternoon, Your  
5 Honor. Margaret Newell from the Department of  
6 Justice on behalf of the General Services  
7 Administration and the Federal Communications  
8 Commission.

9 The government, the United States  
10 government is happy that this sale seems to be  
11 providing for not only the transition or to the  
12 transition of customers, but also seems to be  
13 providing for some kind of reasonable  
14 accommodation for the GSA contracts to be -- to  
15 allow the Federal Government to continue its work  
16 and not have telephone service disrupted.

17 I would state for the record,  
18 though, I have been assured by counsel for the  
19 Debtors that all the documentation addresses  
20 principal concerns including the notice provisions  
21 and the FCC regulations promulgated under  
22 47 U.S.C. Section 214, would be complied with  
23 under this order.

24 Also, that the order provides that

1 any assignment of FCC licenses would be subject to  
2 prior approval by the FCC. And also that any  
3 assumption and assignment of GSA contracts would  
4 be subject to consent and innovation procedure  
5 according to GSA's federal acquisition  
6 regulations.

7 I think that that's all provided for  
8 in here, but I think I did not get a chance to  
9 read every single word in all these documents. So  
10 I just want to state our concerns for the record.  
11 I believe that they have been addressed.

12 THE COURT: Does anyone have an  
13 opposition to the breakup fee?

14 (Silence.)

15 THE COURT; All right. Then the  
16 application is granted.

17 Now, following the agreement.

18 MR. SHAPIRO: Thank you, Your  
19 Honor.

20 What I'd like to do now is turn to  
21 the actual agreement that we have and I'd like to  
22 briefly proffer the testimony of Stefan  
23 Feuerabendt, managing of Blackstone Partners. If  
24 Your Honor would let me proffer his testimony.

1 THE COURT: Yes.

2 MR. SHAPIRO: It will be short.

3 Mr. Feuerabendt is an M.D. of Blackstone, Debtor's  
4 financial advisor, their expert in financial  
5 advisory engagements including Chapter 11,  
6 assigned for debtor-in-possession, is intimately  
7 familiar with the sale process of Blackstone, has  
8 been central to the marketing effort of the  
9 Debtors since the summer.

10 They contacted over a hundred  
11 potential buyers. They put together a sale book,  
12 which included a description of all the assets to  
13 be sold. They oversaw a data room at the Debtors'  
14 headquarters.

15 They have met with over a dozen  
16 potential buyers and they worked with Debtors'  
17 counsel and others throughout this entire process  
18 to try to secure a purchaser.

19 IDT was one of the participants who  
20 participated in the due diligence process that  
21 Blackstone had made contact with, Mr. Newman. Mr.  
22 Fair Ron main colleague ran the Augusta awe which  
23 at Intel's bid was named the highest and best  
24 offer.

1                   Since yesterday Mr. Fewer has been  
2 involved in all aspects of negotiations with IDT,  
3 including working through the night with us to try  
4 to get the agreement executed by this morning.

5                   He would testify that this was an  
6 arm's length negotiation, that it was done all in  
7 good faith. And that under the circumstances of  
8 these cases, and at this time, it is the highest  
9 and best offer that the Debtors have received for  
10 the assets to be sold.

11                  In addition, since the buyer is  
12 asking for an extension of the period under 364(d)  
13 to assume or reject contracts at the buyers'  
14 request, that will provide the buyer with an  
15 opportunity to evaluate all the contracts so that  
16 they can determine which they would assume or  
17 which they would reject. And during that period  
18 of time, while they were doing -- making such  
19 evaluation, they will be paying, starting on the  
20 closing date, which we anticipate will be  
21 tomorrow, for all the costs that are incurred from  
22 and after the closing date for such contracts.

23                  And so Mr. Feuerabendt would testify  
24 that cause exists for an extension of that section



1 and to allow them lateral, allow IDT what the  
2 lease, subject to their continuing to pay for all  
3 the costs associated there with from and after the  
4 closing date.

5 That would be Mr. Feuerabendt's  
6 proffer in support of the sale.

7 MR. TURNER: Good afternoon, Your  
8 Honor. Andrew Turner appearing for Williams  
9 Communications.

10 Your Honor, Williams Communications  
11 is a supplier to Winstar pursuant to this Court's  
12 order of August 22nd approving an interim  
13 agreement, which provided for certain payment  
14 considerations and the right of Williams  
15 terminated upon five days written notice. The  
16 Debtor defaulted. Williams gave its notice to  
17 terminate.

18 Your Honor entered a temporary  
19 restraining order last Monday restraining us from  
20 taking any further actions in response to  
21 terminate as a result of Debtors' failure to pass  
22 over \$6 million.

23 We have great concerns about the  
24 sale going forward, Your Honor, particularly the

1 fact that apparently the testimony will be that  
2 the buyer will pay the costs for performance from  
3 tomorrow through the closing date for vendors,  
4 which we assume would include Williams  
5 Communications, however we don't know who the  
6 buyer is.

7                   We have not had an opportunity to  
8 evaluate the credit of the buyer and we believe  
9 that it's inappropriate for this Court to require  
10 us by approving this sale to continue to extend  
11 credit to a buyer to be named shortly, whose  
12 financials we have never had an opportunity to see  
13 whether we wish to extend credit.

14                   Our extension of credit runs  
15 \$1 million per week, and if it's somebody we don't  
16 want to do business with, we don't want to be  
17 restrained. And apparently the last version of  
18 the order I saw contains a preliminary injunction  
19 requiring that Williams and other supplies  
20 continue to provide services, and we're not  
21 allowed to terminate.

22                   So we have an objection both to the  
23 process as well as to -- we appreciate the  
24 opportunity to inquire of the witness of

1 Blackstone about who this buyer is and what  
2 assurances there are that vendors will be paid.

3 THE COURT: We can put the witness  
4 on the stand and you can examine him.

5 MR. JONAS: Me?

6 THE COURT: No, the Blackstone  
7 witness.

8 THE CLERK: Raise your right hand.  
9

10 STEFAN FEUERABENDT,  
11 the deponent herein, having first  
12 been duly sworn on oath, was  
13 examined and testified as follows:

14 THE CLERK: Could you state and  
15 spell your name for the record?

16 THE WITNESS: Stefan Feuerabendt,  
17 S-T-E-F-A-N F-E-U-E-R-A-B-E-N-D-T.

18 BY MR. TURNER:

19 Q. Sir, could you tell us where you're  
20 employed and what your capacity has been in  
21 connection with the sale process here?

22 A. I'm a managing director at the Blackstone  
23 Group, an investment banking firm in New York  
24 City. I have been involved in the sale process

1 since, approximately, mid-August, including  
2 talking to most of the potential investors and  
3 directly being involved with all those that  
4 performed due diligence.

5 Q. I understand, sir, that it's your  
6 testimony that the buyer would be paying the costs  
7 for suppliers to the Debtor from and after the  
8 closing date; is that correct?

9 A. That's my understanding.

10 Q. Okay. Have you done any examination of  
11 the financial statements or other ability to pay  
12 of the buyer?

13 A. The acquirer is a newly formed entity  
14 which will be funded, it's my understanding, and  
15 also their counsel has received \$30 million, which  
16 will be escrowed immediately to the acquirer. And  
17 that an additional 30 million, as we talked about  
18 in this court, is in the process of being wired to  
19 their counsel, also for purposes of being put into  
20 escrow.

21 That 30 million is allocated solely  
22 for purposes of continuing to operate the  
23 business, including paying vendors.

24 Q. Okay. And has the buyer, in the

1 agreement that you have negotiated or been  
2 involved in negotiating, has the buyer made an  
3 agreement to take all costs for the vendors,  
4 including any of the carriers who may continue any  
5 type of telecommunications or other source to the  
6 entity after the purchase?

7 A. That's my understanding until they decide  
8 to either assume or reject the contract or  
9 terminate the service, in which case they would no  
10 longer be obligated.

11 Q. Is the buyer required to prepay those  
12 services?

13 A. My understanding is they have agreed to  
14 prepay for services.

15 Q. Okay. Are they going to post any  
16 deposits with suppliers?

17 A. I don't know the answer to that  
18 question.

19 Q. The terms of the prepayment, what are  
20 they?

21 A. I believe a week in advance.

22 Q. So on the date of closing, they're going  
23 to pay all the suppliers a week in advance?

24 A. That's my understanding of the deal. I'm

1 not sure it's documented that way, but that's my  
2 understanding of the deal.

3 Q. Okay. So in that process, has any  
4 examination been made of the run rate, for  
5 example, for bills run up by Williams  
6 Communications in providing goods or services?

7 A. There are forecasts that -- the company  
8 has forecasts that the company has made. I've  
9 seen a variety of different forecasts under a  
10 range of cash burns that the company has in those  
11 forecasts ranging from anywhere from five million  
12 to \$10 million at the other side, depending on  
13 which buyer it was and what assumptions were made  
14 with respect to services that they would continue  
15 to take.

16 My understanding is that it would  
17 run, approximately, \$8 million a month with  
18 respect to Winstar in particular. I'm not sure  
19 what the cash obligations are as I recall.

20 Q. What would be the \$8 million a month,  
21 what would that be for?

22 A. It would be for if the company were  
23 retained, as with all the customers, and continued  
24 to operate, they would be paying for SG & A

1 employee-related expenses, telelocator charges,  
2 basically all the operating costs of the company.

3 Q. Would that include, then, the payments  
4 due to Williams Communications?

5 A. It's my understanding that it does.

6 Q. So the run rate for Williams has been,  
7 roughly, four and a half million a month and you  
8 say the figures available to you show that from  
9 tomorrow forward, the cost is going to be eight  
10 million?

11 A. Yes. I don't -- that's correct. I don't  
12 recall the specific amount allocated to Williams  
13 in that number.

14 Q. Okay. Have you seen any financial  
15 statements for the buyer effective as of the  
16 closing of the transaction?

17 A. I have not.

18 MR. JONAS: Your Honor, could I  
19 speak?

20 THE COURT: In a moment. You'll  
21 have an opportunity.

22 BY MR. TURNER:

23 Q. Are any of the assets of the buyer  
24 encumbered by any lenders to the buyer?

1       A.     My understanding is there are no lenders,  
2     so the answer is no.

3       Q.     So the 68 million is going to come in,  
4     that's going to be free and clear of all liens,  
5     claims and encumbrances?

6       A.     That is my understanding.

7       Q.     Are there any guarantees to be afforded  
8     by any entity associated with the buyer to assure  
9     vendors that the protection for payment of their  
10    bills --

11      A.     There is -- no, I am sorry. Can you  
12    repeat the question, please?

13      Q.     Sure. Are there any guarantees to be  
14    offered by affiliates of the buyer to assure  
15    vendors that their bills will get paid from the  
16    closing forward?

17      A.     Not to my knowledge.

18      Q.     So then it's my understanding, see if  
19    I've got this right, that the buyer takes over  
20    tomorrow, and will run the business until it  
21    decides to assume or reject contracts and will  
22    prepay in advance for all its vendors?

23      A.     That's my understanding. Again, I don't  
24    know that that prepayment is documented, but



1 that's my understanding of what their intent is.

2 Q. Can you tell me how much Williams  
3 Communications will receive tomorrow?

4 A. I cannot.

5 MR. TURNER: Thank you.

6 THE COURT: Is there any other  
7 objectors who have questions of the witness?

8 MS. SAWCZUK: Your Honor, Marie  
9 Sawczuk. I'm here not only --

10 THE COURT: Could you turn that  
11 microphone on, please.

12 MS. SAWCZUK: Marie Sawczuk from  
13 Saul Ewing. I am here not only on Espire  
14 Communications, but also on behalf of two  
15 landlords, SV Atlanta Peachtree and Heitman  
16 Capital Management.

17 I have just one question for the  
18 witness.

19 BY MS. SAWCZUK:

20 Q. Sir, you had said that the eight million  
21 a month included employee expenses, telelocator  
22 charges, and you said something that I couldn't --  
23 that wasn't audible to me. What other things are  
24 included in that \$8 million a month number?

1           A.     I think my characterization was broad  
2 enough so that it captured essentially all costs  
3 of the Debtor. Let me clarify.

4                     The eight million a month is a  
5 projection that the company, the Debtor has  
6 prepared. It's not a projection in the forecast  
7 that the buyer has prepared.

8                     They may operate the business in a  
9 very different fashion from what the intent of the  
10 company of the Debtors were, so that burn rate may  
11 be eight million, may be less than eight million.  
12 I doubt if it's going to be higher.

13           Q.     Let me be specific then: Did the eight  
14 million a month include payments to landlords?

15           A.     I believe it did.

16                     MS. SAWCZUK: Thank you.

17                     THE COURT: Any other objectors who  
18 want to examine the witness?

19                     MR. JESSOP: Douglas Jessop on  
20 behalf of Univance Telecommunications.

21 BY MR. JESSOP:

22           Q.     Was THE \$8 million a net burn?

23           A.     Yes.

24           Q.     That was a net burn.

1                   So we're really talking 22 million  
2 then a month, approximately, or what's the gross  
3 revenues?

4           A.     Yeah. The run rate in the projections  
5 is, approximately, 19 or \$20 million. So in  
6 negative net, the 8 burn wouldn't apply. So  
7 around 28 million per month.

8           Q.     Okay. So that explains some of the  
9 confusion about who's getting how much out of this  
10 deal?

11          A.     Right.

12          Q.     Next, I heard your testimony to be that  
13 they would pay all expenses. They are not going  
14 to pay for non-utilized expenses; is that correct?

15          A.     I don't believe so. If that service is  
16 not being provided, I don't believe they're going  
17 to pay for it.

18          Q.     Well, a lot of carriers provide capacity,  
19 don't they?

20          A.     Yes.

21          Q.     And so when they say they're not going to  
22 pay for stuff they don't use or utilize, what does  
23 that mean?

24          A.     You know, I don't feel frankly qualified

1 to answer what the debt -- the buyer's intend with  
2 respect to what they're going to pay is, whether  
3 they're going to pay for something that they're  
4 not utilizing or not.

5 My understanding is that they will  
6 pay for amounts owing as a result of contractual  
7 obligations of the Debtor until they've decided to  
8 assume, reject or assume that contract.

9 Q. Okay. You were part of the negotiation  
10 of the order as well that's part of this deal?

11 A. I reviewed the order, yes.

12 Q. There's a paragraph, Paragraph 23 that  
13 has quite a few provisions that relate to carriers  
14 and the continuation of business. Are you aware  
15 of that paragraph?

16 A. I would be more -- I am aware of the  
17 paragraph, but I don't recall the exact contention  
18 of the paragraph.

19 Q. It asks the Court to order all of the  
20 carriers to continue to do business with the  
21 Debtor and the manager?

22 A. Right.

23 Q. It orders them to continue to provide  
24 services regardless of and to negotiate new

1 matters without any nonrecurring charges, that  
2 kind of thing?

3 A. Mm-hmm.

4 Q. Was that essential to the deal?

5 A. Absolutely because without the providers  
6 providing services to the company or having an  
7 obligation to do so, the entire network could go  
8 down.

9 Q. Is it intended that the entire, not the  
10 entire -- how much of the network is going to be  
11 retained?

12 A. I don't know.

13 Q. Do you know if they're going to continue  
14 to operate into the future or is this just a slice  
15 and dice?

16 A. I don't know what their intention is. I  
17 know they have an obligation to continue to keep  
18 the network up until a cutoff date which would  
19 provide enough time for customers to be  
20 transitioned off of the system.

21 That's their obligation. When they  
22 want to determine that is, frankly, their choice.

23 Q. So at this point it's fairly open ended.  
24 We don't really know what will happen going

1 forward, how long of a time period that will take;  
2 is that correct?

3 A. I don't know that sitting here today.

4 MR. JESSOP: Thank you.

5 BY MR. LADDIN:

6 Q. Good afternoon, I'm Darryl Laddin. I  
7 represent the operating subsidiaries of Verizon  
8 Communications.

9 Did you prepare a budget for the  
10 ongoing operations of the company after the  
11 closing date?

12 A. No.

13 Q. So sitting here now, do you know what the  
14 expected and projected revenues are and expenses?

15 A. I do not.

16 Q. So sitting here today, you can't tell us  
17 whether it's going to be enough money in the  
18 escrow account to fund the cost of operating the  
19 Debtor over the next 30 to 60 days; is that right?

20 A. I can't tell you with any certainty. I  
21 don't think anyone could.

22 I think that based on the company's,  
23 the Debtors' historical operating cash burn, if  
24 they continue to operate the system as is, it will

1 be, as I said, something on the order of eight  
2 million negative cash flow a month, assuming that  
3 there hasn't been a negative impact as a result of  
4 these proceedings over the last couple weeks with  
5 respect to customers falling off the system.

6 Q. But you haven't prepared a budget;  
7 correct?

8 A. That's correct.

9 Q. And there's no -- you really don't have  
10 any basis other than speculation to conclude that  
11 there would be sufficient funds; correct?

12 A. Other than what I just told you.

13 Q. And if there are insufficient funds in  
14 the escrow account to fund all of the expenses  
15 post closing, is it your understanding that IDT  
16 would or would not fund the difference?

17 A. IDT meaning?

18 Q. The purchaser.

19 A. The whole company or the acquirer?

20 Q. Whoever the buyer is. Let me rephrase  
21 the question.

22 A. My understanding is the buyer has an  
23 obligation to do that.

24 Q. The buyer has an obligation to fund any

1 expenses that exceed the amounts that are in the  
2 escrow?

3 A. That's my understanding, yes.

4 Q. And have you seen -- have you  
5 differentiated between IDT, the public company,  
6 and the buyer?

7 A. Right. Because there was a newly formed  
8 corporation that is the actual acquirer of assets,  
9 which is not IDT, the company. I believe it's  
10 going to be a 95 percent owned company or  
11 subsidiary of IDT, the public company.

12 Q. And you haven't seen any financial  
13 statements of that buyer, have you?

14 A. I don't believe there are any.

15 Q. And currently you don't know what the  
16 capitalization of that company is, do you?

17 A. My understanding is -- well, I don't know  
18 that the funds that have gone from the buyer's  
19 counsel have been injected into the new company as  
20 of this date. In fact, I would think that they  
21 haven't been, because I think they have to go  
22 to -- actually, no, they don't have to go into  
23 escrow.

24 The 30 million I don't know that



1 that's been used to capitalize.

2 Q. Do you have any idea what the run rate is  
3 for Verizon during the next 30 days?

4 A. I don't understand the question.

5 Q. Do you know how much in expenses the  
6 Debtor is going to incur charges from Verizon over  
7 a 30-day period?

8 A. No, I do not.

9 Q. And you don't have any idea in your  
10 \$8 million burn run rate how much of that was  
11 Verizon; correct?

12 A. I don't know.

13 Q. Are you aware of the types of services  
14 that Verizon provides?

15 A. I'm not specifically aware of all of the  
16 services that Verizon provides. My understanding  
17 of what Verizon provides is essentially capacity,  
18 local capacity for the company, local telecom.

19 Q. What do you mean by that?

20 A. I'm not even -- though I have an  
21 engineering degree, I'm not an expert in telecom  
22 engineering. But essentially my understanding is  
23 that you have lines, wires, circuits, et cetera,  
24 that the companies, customers, traffic could

1 travel over. And that they utilize your system in  
2 having that traffic travel over your circuits and  
3 pay for it.

4 Q. And are you aware that whatever services  
5 Verizon provides to the Debtors are provided  
6 pursuant to contracts?

7 A. I have heard that. I haven't actually  
8 read the contract, but that is my understanding.

9 Q. And is it your understanding that the  
10 buyer is not seeking an assignment of those  
11 contracts?

12 A. It's my understanding that the buyer may  
13 seek an assignment of those contracts and has time  
14 to decide whether he will do that. I don't know  
15 whether he will or not.

16 Q. And if the buyer chooses not to take an  
17 assignment of those contracts, is it your  
18 understanding then that the buyer would not be  
19 entitled to have any of the facilities that  
20 Verizon currently provides to Winstar under those  
21 contracts?

22 A. I think that's a legal question. I'm not  
23 qualified to answer that.

24 Q. You don't have any reason to believe, as

1 you sit there, that the buyer would be entitled to  
2 receive any of the facilities that Verizon  
3 provides to Winstar absent an assignment in  
4 compliance with Section 365 of the code, do you?

5 A. No.

6 Q. Do you have any idea whether there is any  
7 period under the purchase agreement under which  
8 Winstar is required -- excuse me -- the buyer is  
9 required to make a decision on whether to assume  
10 or reject contracts?

11 A. I believe it was 120 days.

12 Q. So at the end of the 20 days the buyer  
13 has to decide whether it's going to assume or  
14 reject contracts?

15 A. That's my understanding unless compelled  
16 by the Court to make that decision. I think  
17 that's correct.

18 Q. Are you aware that Verizon provides  
19 certain telelocation services to Winstar?

20 A. I'm not going to disagree with that. I'm  
21 not specifically aware of that.

22 Q. Do you know whether there's any equipment  
23 located in any of the telelocation facilities?

24 A. I believe there is.

1 Q. And do you know what's going to happen to  
2 that equipment under this purchase agreement?

3 A. If it's an asset of Winstar, the buyer is  
4 going to buy it. It goes with the buyer.

5 Q. And is it then going to be removed from  
6 Verizon telelocation facilities?

7 A. I have no idea.

8 Q. Do you know whether the buyer intends to  
9 or Winstar intends to comply with interconnection  
10 agreements pursuant to which Winstar has obtained  
11 a telelocation facility?

12 A. Can you repeat that?

13 Q. In removing any equipment from the  
14 telelocation facilities, is Winstar, the buyer,  
15 going to comply with interconnection agreements  
16 governing those telelocation facilities?

17 A. I don't believe the Debtor will have any  
18 obligation with respect to Verizon contracts after  
19 this transaction closes. And I believe until --  
20 again, I think this is -- I think this is a legal  
21 question.

22 Until the buyer assumes or rejects  
23 the contract, he will have to fulfill what  
24 previously was Debtors' obligations under those

1 contracts for any services or any obligations that  
2 occurred after the closing.

3 Q. Let me change the subject slightly and  
4 turn to the discontinuation of service notices  
5 that the buyer is required to provide to  
6 customers. Are you familiar with the  
7 discontinuation notices?

8 A. I haven't actually seen the notices, but  
9 I'm familiar with the issue.

10 Q. And what is your understanding of what  
11 the issue is?

12 A. The issue is that the great lawyers want  
13 a certain period of time for, and as a matter of  
14 law, but again I'm not a lawyer. That there's an  
15 obligation to provide notice to customers so that  
16 they can transition off of the system.

17 Q. And what is your understanding of what  
18 that notice period is?

19 A. I believe -- notice document I believe we  
20 have -- I'm sorry. Can you repeat the question?

21 Q. Do you know what the notice period is?

22 A. As a statute or in the contract?

23 Q. Both.

24 A. I don't know what it is as a statute. I

1 believe the requirement in the contract is 35  
2 days.

3 Q. If the buyer or Winstar were required to  
4 provide service for longer than 35 days, would the  
5 buyer be responsible for the payment of all  
6 expenses incurred by Winstar in providing that  
7 service?

8 A. Winstar is not providing any service.  
9 Oh, I'm sorry.

10 Maybe there -- actually since they  
11 still have licenses. My understanding is until  
12 the buyer rejects the contract, they are obligated  
13 to pay amounts due under those contracts.

14 Q. And is it your understanding that the  
15 buyer could not reject the contract prior to the  
16 end of any required notice period?

17 A. I actually don't know how to answer that  
18 question.

19 Q. Now, are you aware of whether there  
20 were -- strike that.

21 Are you aware of any order that was  
22 entered into among the Debtor and Verizon with  
23 respect to adequate assurance of payment?

24 A. I'm not.

1       Q.    You weren't aware, for example, that  
2   there was a stipulation in the order that was  
3   entered by this Court that required a prepayment  
4   semimonthly to Verizon.

5       A.    I don't recall specifically that quarter  
6   stipulation.

7       Q.    Were you aware at any point in time of  
8   whether any carrier gave any notice of  
9   discontinuation of service to Winstar prior to  
10   today?

11      A.    I believe there was a termination from  
12   Williams sometime ago, but that's the only one  
13   I've heard of. And I haven't seen that  
14   termination notice.

15      Q.    Were you aware of a termination notice  
16   that was sent to the Debtor by Verizon?

17      A.    I was not.

18      Q.    Do you have any reason to believe that  
19   the Debtor didn't receive termination notice from  
20   Verizon?

21      A.    No.

22      Q.    Did you negotiate any of the specific  
23   provisions in the order with respect to this sale  
24   that was circulated to various parties?

1       A.     I was a participant in virtually all  
2 discussions associated with the asset purchase  
3 agreement, the management agreement, and the  
4 order.

5                   MR. LADDIN:     I have no further  
6 questions.

7                   MR. PALACIO:    Good afternoon, Your  
8 Honor.   Ricardo Palacio of Ashby & Geddes.   At the  
9 outset, I'd note that I'm here as local counsel of  
10 Williams Communication and I'm also here as  
11 counsel to Time Warner Telecom.

12 BY MR. PALACIO:

13       Q.     Mr. Feuerabendt?   I apologize.

14       A.     Feuerabendt.

15       Q.     Sorry.   I apologize.

16                   I want to briefly revisit testimony  
17 you gave in connection with the examination  
18 conducted by counsel for Univance.   And  
19 specifically I want to ask you, again, and please  
20 put in your words, was or excuse me, is  
21 Paragraph 23 of the proposed order, which provides  
22 that there will be that 120-day transition period  
23 such that carriers have to provide the service  
24 under the same terms and continues as set forth in



1 current agreements?

2 A. Mm-hmm.

3 Q. Would you say that was a critical  
4 component of the deal?

5 A. Yes.

6 Q. So in other words, this is something that  
7 benefited the buyers?

8 A. It facilitated the transaction.

9 Q. Let me see if I can clarify the  
10 question. By having that in place, does it  
11 benefit the buyer?

12 A. It permits the transaction to go  
13 forward. I don't believe they would have done  
14 this transaction.

15 I'll let them speak for themselves  
16 by but than do think they would have done that  
17 transaction if that provision had not been there.

18 Q. Let's try to get there.

19 A. If it benefits the buyers at the end of  
20 the day -- we'll find out if this transaction  
21 benefits the buyer and this will facilitate the  
22 transaction.

23 Q. Is it safe to say without it, the deal  
24 wouldn't go through?

1           A.     Yes.

2           Q.     Conversely, under the proposed order, the  
3 buyers, not the Debtors, are on the hook for any  
4 obligations arising under those agreements;  
5 correct?

6           A.     That is my understanding.

7           Q.     So correct me if I'm wrong, under these  
8 agreements you not only get the benefit of them,  
9 but you also have the obligations they're under as  
10 well?

11          A.     The buyer does, yes.

12                   MR. PALACIO:     Thank you.

13                   MR. SHAPIRO:     Your Honor,  
14 Ms. Newell from the FCC just wanted me to let  
15 everyone know for the record that a last minute  
16 negotiation that she had with the buyers on the  
17 management agreement requires the buyers to  
18 continue to fund all costs for the remainder of 31  
19 days or so long as the FCC shall require it.

20                   She thought that was relevant to the  
21 entire line of inquiry that people were asking  
22 about in terms of how long the buyer will fund  
23 because she negotiated that with the buyer and she  
24 wanted that to be known on the record.

1 THE COURT: All right. Thank you.

2 MR. KIZEL: Your Honor, I'm not sure  
3 what the procedure is here, but I do have some  
4 clarifications and counsel for the Debtor, I think  
5 just qualified one of the main issues that we did  
6 have. But I don't want to burn the record and ask  
7 the witness questions if we'll have opportunity at  
8 a later point to perhaps clarify what exactly is  
9 going to happen under the management agreement and  
10 asset purchase agreement, which we just had  
11 opportunity to review the last couple of hours.

12 I'm not sure, I might mention I'm  
13 Paul Kizel, K-I-Z-E-L, counsel for AT&T. Again,  
14 we haven't taken a position yet. We just got the  
15 documents, and again, I think there are some  
16 issued areas of clarification that I would like to  
17 have known, so we can make an important decision.  
18 We haven't taken a position one way or the other,  
19 but I don't necessarily have questions for the  
20 witness.

21 He may not be the person who can  
22 best answer the questions, so I don't want to do  
23 that if I'll have an opportunity later on to ask  
24 questions perhaps of Debtor's counsel or counsel

1 for the purchaser.

2 THE COURT: Or a representative of  
3 the buyer.

4 MR. KIZEL: That's correct.

5 THE COURT: All right. Thank you.

6 BY MS. IORII:

7 Q. Good afternoon. Regina Iorii from  
8 Ashby & Geddes for Fleet Capital Corporation. And  
9 I'm sorry, Mr. Feuerabendt?

10 I'm sorry.

11 A. Everybody seems to be doing it.

12 Q. It's a long name?

13 A. Feuerabendt.

14 Q. I'm sorry. Mr. Feuerabendt, I just have  
15 a couple of questions.

16 You said that substantially all of  
17 the assets are being sold in this corporate  
18 transaction to the new company to be formed.

19 What specific assets are being sold?

20 A. There is not a list of specific assets  
21 that I'm aware of. There is a list of excluded  
22 assets that the buyer is not buying.

23 And all other assets of the Debtors  
24 other than those excluded assets are being

1 acquired.

2 Q. All right. What are you considering as  
3 the assets?

4 A. Anything that the Debtor owns right now  
5 other than the excluded asset.

6 Q. Let me perhaps be a little more  
7 specific. My client, Fleet Capital Corporation,  
8 leases switches to Winstar.

9 A. Mm-hmm.

10 Q. Are they being considered assets?

11 A. I don't know.

12 Q. Is there going to be, at any time, a list  
13 of the specific assets that are being transferred  
14 in this transaction?

15 A. Not to my knowledge.

16 MS. IORII: Thank you.

17 THE COURT: Any other questions for  
18 this witness?

19 MR. GWYNNE: Thank you, Your  
20 Honor. Kurt Gwynne on behalf of MCI Worldcom.  
21 BY MR. GWYNNE:

22 Q. I'll try to be brief and not repeat too  
23 much of prior counsel's questions, but there's one  
24 area in particular I need some clarification on.

1                   You testified that the Debtors' burn  
2 rate was approximately 8.8 monthly, a month; is  
3 that correct?

4           A.     I didn't say 8.8, I said it was a range.  
5 The company's forecast was a range of different  
6 numbers. I've seen as low as five. I've seen as  
7 high as ten.

8                   And I said, you know, reasonable  
9 probability was about eight.

10          Q.     What was Winstar's burn rate in October  
11 of 2001?

12          A.     I don't know the answer to that.

13          Q.     What was Winstar's burn rate in November  
14 of 2001?

15          A.     I don't have the answer to that.

16          Q.     How can you determine whether the  
17 forecast are accurate if you don't know what the  
18 historical burn rate has been?

19          A.     I just don't recall sitting here. I've  
20 looked at company's numbers. And I've seen  
21 receipts on the order of \$20 million a month.

22                   And I've seen costs that would imply  
23 that they could get to an eight million burn rate  
24 by January. Again, those are the company's

1 numbers. I'm not making any representations  
2 whether those are accurate or not, I'm just  
3 telling you what I'm basing my \$8 million number  
4 on.

5 Q. Okay. So aside from not making any  
6 representations about whether your statements  
7 about the burn rate are accurate, you don't know  
8 what the Debtors' historical burn rate has been to  
9 date?

10 A. I don't recall sitting here today exactly  
11 what that was.

12 Q. And the Debtors' historical burn rate,  
13 which you're not aware of, probably doesn't  
14 include payments that weren't made to the  
15 utilities; correct?

16 In other words, if the Debtors' burn  
17 rate for September was 10 million, cash burn rate,  
18 that obviously doesn't include --

19 A. Yeah.

20 Q. -- payments that should have been made  
21 but were not made; correct?

22 A. I think that the numbers that I looked at  
23 were actual, actual numbers of what the company  
24 paid, et cetera. It didn't include accruals for

1 people. They did not pay the \$8 million I was  
2 referring to. That was on a cash basis assuming  
3 everybody was paid currently.

4 Q. Well, it was on a cash basis regardless  
5 of who was paid currently; right?

6 A. I'm saying that the forecast that I've  
7 seen is on a cash basis, and people were assumed  
8 to have been paid currently.

9 Q. But you don't know whether the forecast  
10 is reasonable with respect to the historical burn  
11 rate because you don't know what that is; right?

12 A. I have looked at the company's numbers.  
13 Again, I'm not going to make any representations  
14 about the company's forecast. I can tell you what  
15 I've seen.

16 There are a number of parties that  
17 have been involved in looking at and preparing,  
18 opining, et cetera on the forecasts including the  
19 chief infrastructure officer of the company, and  
20 I'm not going to claim to be an expert in what the  
21 future cash burn of the company would be, nor  
22 could I say with any degree of certainty what the  
23 future cash burn of the buyer would be.

24 Q. Okay. So you don't know if the burn rate



1 is going to be 10 or \$15 million a month?

2 A. I don't believe it's going to be greater  
3 than what the Debtors had expected to pay.

4 Q. Now, and that's approximately eight or  
5 nine million a month?

6 A. I'm using an \$8 million number as a  
7 reasonable, 8 to \$10 million.

8 Q. Now, yesterday in court, do you remember  
9 a representative from the purchaser represented to  
10 the Court that one of the reasons IDT was a good  
11 purchaser is because it had one billion, I  
12 believe, in cash and one billion in assets,  
13 something along those lines?

14 A. Right.

15 Q. IDT is not, in fact, the purchaser,  
16 though, is it?

17 A. No, but it's making a substantial  
18 investment which it can't recuperate because there  
19 are no out for them. And I have dealt with them,  
20 they seem to be very intelligent business people.

21 And I don't think they're going to  
22 invest \$70 million of cash and never get it back.  
23 And you know without seriously looking at what  
24 they're trying to do here and making a calculation

1 that they would have to put in more or not put in  
2 more, I don't think they're going to make that  
3 decision.

4 Q. Now, this new entity that was formed was  
5 just created in the last couple of days; is that  
6 correct?

7 A. I believe it was formed within the last  
8 week, yes.

9 Q. Okay. And the only capitalization of  
10 that entity are the funds that are going to be  
11 paid then under the sale agreement; is that  
12 correct?

13 A. That's my source. That's my  
14 understanding that's that the only source  
15 contemplated by this agreement, I don't know what  
16 their intention is with regard to future  
17 capitalization.

18 Q. So if it's only what's provided in the  
19 sale agreement, there's only going to be \$30  
20 million to pay carriers prior to what's called the  
21 cutoff date under the management agreement; is  
22 that correct?

23 A. Under the management agreement, that's  
24 correct.

1 Q. And under the management agreement, the  
2 cutoff date is determined to be 35 days after the  
3 purchaser decides and its discretion to send out  
4 notices to the customers; correct?

5 A. Yes.

6 Q. Now, if the purchaser decides to send out  
7 notices of termination to the customers, a  
8 potential effect of that could be some customers  
9 decide to go somewhere else; right?

10 A. Yes.

11 Q. So would you agree that the purchaser may  
12 not have an incentive to send out those notices  
13 particularly any time soon?

14 A. I don't understand that logic.

15 Q. If sending out the notices could cause  
16 customers to go elsewhere, the purchaser may not  
17 be inclined to send out those notices; correct?

18 A. I don't understand the statement.

19 Q. Under the management agreement, the  
20 purchaser, you agree the purchaser decides when to  
21 send out these notices to the customer; correct?

22 A. Right.

23 Q. And if the purchaser never sends them  
24 out, then we never get to the cutoff date